

109TH CONGRESS
1ST SESSION

S. 2152

To promote simplification and fairness in the administration and collection
of sales and use taxes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 2005

Mr. ENZI introduced the following bill; which was read twice and referred to
the Committee on Finance

A BILL

To promote simplification and fairness in the administration
and collection of sales and use taxes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sales Tax Fairness
5 and Simplification Act”.

6 **SEC. 2. CONSENT OF CONGRESS.**

7 The Congress consents to the Streamlined Sales and
8 Use Tax Agreement.

1 **SEC. 3. SENSE OF THE CONGRESS.**

2 (a) SALES AND USE TAX SYSTEM.—It is the sense
3 of the Congress that the sales and use tax system estab-
4 lished by the Streamlined Sales and Use Tax Agreement,
5 to the extent that it meets the minimum simplification re-
6 quirements of section 6, provides sufficient simplification
7 and uniformity to warrant Federal authorization to Mem-
8 ber States that are parties to the Agreement to require
9 remote sellers, subject to the conditions provided in this
10 Act, to collect and remit the sales and use taxes of such
11 Member States and of local taxing jurisdictions of such
12 Member States.

13 (b) PURPOSE.—The purpose of this Act is to—

14 (1) effectuate the limited authority granted to
15 Member States under the Streamlined Sales and
16 Use Tax Agreement; and

17 (2) not grant additional authority unrelated to
18 the accomplishment of the purpose described in
19 paragraph (1).

20 **SEC. 4. AUTHORIZATION TO REQUIRE COLLECTION OF**
21 **SALES AND USE TAXES.**

22 (a) GRANT OF AUTHORITY.—

23 (1) IN GENERAL.—Each Member State under
24 the Streamlined Sales and Use Tax Agreement is
25 authorized, subject to the requirements of this sec-
26 tion, to require all sellers not qualifying for the

1 small business exception provided under subsection
2 (d) to collect and remit sales and use taxes with re-
3 spect to remote sales sourced to that Member State
4 under the Agreement.

5 (2) REQUIREMENTS FOR AUTHORITY.—The au-
6 thorization provided under paragraph (1) shall be
7 granted once all of the following have occurred:

8 (A) 10 States comprising at least 20 per-
9 cent of the total population of all States impos-
10 ing a sales tax, as determined by the 2000 Fed-
11 eral census, have petitioned for membership and
12 have become Member States under the Agree-
13 ment.

14 (B) The following necessary operational as-
15 pects of the Agreement have been implemented
16 by the Governing Board:

17 (i) Provider and system certification.

18 (ii) Setting of monetary allowance by
19 contract with providers.

20 (iii) Implementation of an on-line
21 multistate registration system.

22 (iv) Adoption of a standard form for
23 claiming exemptions electronically.

24 (v) Establishment of advisory coun-
25 cils.

1 (vi) Promulgation of rules and proce-
2 dures for dispute resolution.

3 (vii) Promulgation of rules and proce-
4 dures for audits.

5 (viii) Provisions for funding and staff-
6 ing the Governing Board.

7 (C) Each Member State has met the re-
8 quirements to provide and maintain the data-
9 bases and the taxability matrix described in the
10 Agreement, pursuant to requirements of the
11 Governing Board.

12 (3) LIMITATION OF AUTHORITY.—The author-
13 ization provided under paragraph (1)—

14 (A) shall be granted notwithstanding any
15 other provision of law; and

16 (B) is dependent upon the Agreement, as
17 amended, meeting the minimum simplification
18 requirements of section 6.

19 (b) TERMINATION OF AUTHORITY.—

20 (1) IN GENERAL.—The authorization provided
21 under subsection (a) shall terminate for all States
22 if—

23 (A) the requirements contained in sub-
24 section (a) cease to be satisfied; or

1 (B) any amendment adopted to the Agree-
2 ment after the date of enactment of this Act is
3 not within the scope of the administration of
4 sales and use taxes or taxes on telecommuni-
5 cations services by the Member States.

6 (2) LOSS OF MEMBER STATE STATUS.—The au-
7 thorization provided under subsection (a) shall ter-
8 minate for a Member State, if such Member State
9 no longer meets the requirements for Member State
10 status under the terms of the Agreement.

11 (c) DETERMINATION OF STATUS.—

12 (1) IN GENERAL.—The Governing Board shall
13 determine if Member States are in compliance with
14 the requirements of subsections (a) and (b).

15 (2) COMPLIANCE DETERMINATION.—Upon the
16 determination of the Governing Board that all the
17 requirements of subsection (a) have been satisfied,
18 the authority of each Member State to require a sell-
19 er to collect and remit sales and use taxes shall com-
20 mence on the first day of a calendar quarter at least
21 6 months after the date the Governing Board makes
22 its determination.

23 (d) SMALL BUSINESS EXCEPTION.—No seller shall
24 be subject to a requirement of any State to collect and

1 remit sales and use taxes with respect to a remote sale
2 if—

3 (1) the seller and its affiliates collectively had
4 gross remote taxable sales nationwide of less than
5 \$5,000,000 in the calendar year preceding the date
6 of such sale; or

7 (2) the seller and its affiliates collectively meet
8 the \$5,000,000 threshold of this subsection but the
9 seller has less than \$100,000 in gross remote tax-
10 able sales nationwide.

11 **SEC. 5. DETERMINATIONS BY GOVERNING BOARD AND JU-**
12 **DICIAL REVIEW OF SUCH DETERMINATIONS.**

13 (a) PETITION.—At any time after the Governing
14 Board has made the determination required under section
15 4(c)(2), any person who may be affected by the Agreement
16 may petition the Governing Board for a determination on
17 any issue relating to the implementation of the Agreement.

18 (b) REVIEW IN COURT OF FEDERAL CLAIMS.—Any
19 person who submits a petition under subsection (a) may
20 bring an action against the Governing Board in the United
21 States Court of Federal Claims for judicial review of the
22 action of the Governing Board on that petition if—

23 (1) the petition relates to an issue of whether—

1 (A) a Member State has satisfied or con-
 2 tinues to satisfy the requirements for Member
 3 State status under the Agreement;

4 (B) the Governing Board has performed a
 5 nondiscretionary duty of the Governing Board
 6 under the Agreement;

7 (C) the Agreement continues to satisfy the
 8 minimum simplification requirements set forth
 9 in section 6; or

10 (D) any other requirement of section 4 has
 11 been satisfied; and

12 (2) the petition is denied by the Governing
 13 Board in whole or in part with respect to that issue,
 14 or the Governing Board fails to act on the petition
 15 with respect to that issue not later than 6 months
 16 after the date on which the petition is submitted.

17 (c) TIMING OF ACTION FOR REVIEW.—An action for
 18 review under this section shall be initiated not later than
 19 60 days after the denial of the petition by the Governing
 20 Board, or, if the Governing Board failed to act on the peti-
 21 tion, not later than 60 days after the end of the 6-month
 22 period beginning on the day after the date on which the
 23 petition was submitted.

24 (d) STANDARD OF REVIEW.—

1 (1) IN GENERAL.—In any action for review
 2 under this section, the court shall set aside the ac-
 3 tions, findings, and conclusions of the Governing
 4 Board found to be arbitrary, capricious, an abuse of
 5 discretion, or otherwise not in accordance with law.

6 (2) REMAND.—If the court sets aside any ac-
 7 tion, finding, or conclusion of the Governing Board
 8 under paragraph (1), the court shall remand the
 9 case to the Governing Board for further action con-
 10 sistent with the decision of the court.

11 (e) JURISDICTION.—

12 (1) GENERALLY.—Chapter 91 of title 28,
 13 United States Code, is amended by adding at the
 14 end the following:

15 **“§ 1510. Jurisdiction regarding the Streamlined Sales**
 16 **and Use Tax Agreement**

17 “The United States Court of Federal Claims shall
 18 have exclusive jurisdiction over actions for judicial review
 19 of determinations of the Governing Board of the Stream-
 20 lined Sales and Use Tax Agreement under the terms and
 21 conditions provided in section 5 of the Sales Tax Fairness
 22 and Simplification Act.”.

23 (2) CONFORMING AMENDMENT TO TABLE OF
 24 SECTIONS.—The table of sections at the beginning
 25 of chapter 91 of title 28, United States Code, is

1 amended by adding at the end the following new
2 item:

“1510. Jurisdiction regarding the streamlined sales and use tax agreement.”.

3 **SEC. 6. MINIMUM SIMPLIFICATION REQUIREMENTS.**

4 (a) IN GENERAL.—The minimum simplification re-
5 quirements for the Agreement, which shall relate to the
6 conduct of Member States under the Agreement and to
7 the administration and supervision of such conduct, are
8 as follows:

9 (1) A centralized, one-stop, multistate registra-
10 tion system that a seller may elect to use to register
11 with the Member States, provided a seller may also
12 elect to register directly with a Member State, and
13 further provided that privacy and confidentiality
14 controls shall be placed on the multistate registra-
15 tion system so that it may not be used for any pur-
16 pose other than the administration of sales and use
17 taxes. Furthermore, no taxing authority within a
18 Member State or a Member State that has with-
19 drawn or been expelled from the Agreement may use
20 registration with the centralized registration system
21 for the purpose of, or as a factor in determining,
22 whether a seller has a nexus with that Member State
23 for any tax at any time.

24 (2) Uniform definitions of products and prod-
25 uct-based exemptions from which a Member State

1 may choose its individual tax base, provided, how-
2 ever, that all local jurisdictions in that Member
3 State shall have a common tax base identical to the
4 State tax base of that Member State. A Member
5 State may enact other product-based exemptions
6 without restriction if the Agreement does not have
7 a definition for the product or for a term that in-
8 cludes the product. A Member State shall relax the
9 good faith requirement for acceptance of exemption
10 certificates in accordance with section 317 of the
11 Agreement, as amended through the date of enact-
12 ment of this Act.

13 (3) Uniform rules for sourcing and attributing
14 transactions to particular taxing jurisdictions.

15 (4) Uniform procedures for the certification of
16 service providers and software on which a seller may
17 elect to rely in order to determine Member State
18 sales and use tax rates and taxability.

19 (5) Uniform rules for bad debts and rounding.

20 (6) Uniform requirements for tax returns and
21 remittances.

22 (7) Consistent electronic filing and remittance
23 methods.

24 (8) Single, State-level administration of all
25 Member State and local sales and use taxes, includ-

1 ing a requirement for a State-level filing of tax re-
2 turns in each Member State.

3 (9) A single sales and use tax rate per taxing
4 jurisdiction, except that a State may impose a single
5 additional rate, which may be zero, on food, food in-
6 gredients, and drugs, provided that this limitation
7 does not apply to the items identified in section 308
8 C of the Agreement, as amended through the date
9 of enactment of this Act.

10 (10) A Member State shall eliminate caps and
11 thresholds on the application of sales and use tax
12 rates and exemptions based on value, provided that
13 this limitation does not apply to the items identified
14 in section 308 C of the Agreement, as amended
15 through the date of enactment of this Act.

16 (11) A provision requiring each Member State
17 to complete a taxability matrix, as adopted by the
18 Governing Board. The matrix shall include informa-
19 tion regarding terms defined by the Agreement in
20 the Library of Definitions. The matrix shall also in-
21 clude, pursuant to the requirements of the Gov-
22 erning Board, information on use, entity, and prod-
23 uct based exemptions.

24 (12) A provision requiring that each Member
25 State relieves a seller or service provider from liabil-

1 ity to that Member State and local jurisdiction for
2 collection of the incorrect amount of sales or use tax,
3 and relieves the purchaser from penalties stemming
4 from such liability, provided that collection of the
5 improper amount is the result of relying on informa-
6 tion provided by that Member State regarding tax
7 rates, boundaries, or taxing jurisdiction assignments,
8 or in the taxability matrix regarding terms defined
9 by the Agreement in the Library of Definitions.

10 (13) Audit procedures for sellers, including an
11 option under which a seller not qualifying for the
12 small business exception in section 4(d) may request,
13 by notifying the Governing Board, to be subject to
14 a single audit on behalf of all Member States for
15 sales and use taxes (other than use taxes on goods
16 and services purchased for the consumption of the
17 seller). The Governing Board, in its discretion, shall
18 authorize such a single audit.

19 (14) As of the day that authority to require col-
20 lection commences under section 4, each Member
21 State shall provide reasonable compensation for ex-
22 penses incurred by a seller directly in administering,
23 collecting, and remitting sales and use taxes (other
24 than use taxes on goods and services purchased for
25 the consumption of the seller) to that Member State.

1 Such compensation may vary in each Member State
2 depending on the complexity of the sales and use tax
3 laws in that Member State and may vary by the
4 characteristics of sellers in order to reflect dif-
5 ferences in collection costs. Such compensation may
6 be provided to a seller or a third party service pro-
7 vider whom a seller has contracted with to perform
8 all the sales and use tax responsibilities of a seller.

9 (15) Appropriate protections for consumer pri-
10 vacy.

11 (16) Governance procedures and mechanisms to
12 ensure timely, consistent, and uniform implementa-
13 tion and adherence to the principles of the stream-
14 lined system and the terms of the Agreement.

15 (17) Each Member State shall apply the sim-
16 plification requirements of the Agreement to taxes
17 on telecommunications services, except as provided
18 herein. This requirement is applicable to Member
19 States as of July 1, 2008, except that sales and use
20 taxes on telecommunications services shall be subject
21 to the Agreement and the authority granted to the
22 Member States when the requirements of section
23 4(a) are met. On or after July 1, 2008, for those
24 Member States which meet the requirements of this
25 paragraph, the authority granted such Member

1 States under section 4 may be exercised by such
2 Member States, pursuant to the terms of section 4
3 and section 5, with respect to taxes on telecommuni-
4 cations services other than sales and use taxes on
5 such services. The following are exceptions to the re-
6 quirement established under this paragraph:

7 (A) The requirement for one uniform re-
8 turn shall not apply, provided, however, there
9 shall be one uniform return for each type of tax
10 on telecommunications services within a State.

11 (B) The requirements for rate simplifica-
12 tion are modified to require that each taxing ju-
13 risdiction shall have only one rate for each type
14 of tax on telecommunications services.

15 (C) The requirements for tax base uni-
16 formity in section 302 of the Agreement shall
17 apply to each type of tax on telecommunications
18 services within a State, but shall not be con-
19 strued to require that the tax base for different
20 types of taxes on telecommunications services
21 must be identical to the tax base for sales and
22 use taxes imposed on telecommunications serv-
23 ices.

24 (18) Uniform rules and procedures for “sales
25 tax holidays”.

1 (19) Uniform rules and procedures to address
2 refunds and credits for sales taxes relating to cus-
3 tomer returns, restocking fees, discounts and cou-
4 pons, and rules to address allocations of shipping
5 and handling and discounts applied to multiple item
6 and multiple seller orders.

7 (b) REQUIREMENT TO PROVIDE SIMPLIFIED TAX
8 SYSTEMS.—

9 (1) IN GENERAL.—The requirements of this
10 section are intended to ensure that each Member
11 State provides and maintains the necessary sim-
12 plifications to its sales and use tax system to war-
13 rant the collection authority granted to it in section
14 4.

15 (2) REDUCTION OF ADMINISTRATIVE BUR-
16 DENS.—The requirements of this section should be
17 construed—

18 (A) to require each Member State to sub-
19 stantially reduce the administrative burdens as-
20 sociated with sales and use taxes; and

21 (B) as allowing each Member State to ex-
22 ercise flexibility in how these requirements are
23 satisfied.

24 (3) EXCEPTION.—In instances where exceptions
25 to the requirements of this section can be exercised

1 in a manner that does not materially increase the
2 administrative burden on a seller obligated to collect
3 or pay the taxes, such exceptions are permissible.

4 **SEC. 7. LIMITATION.**

5 (a) IN GENERAL.—Nothing in this Act shall be con-
6 strued as—

7 (1) subjecting a seller to franchise taxes, in-
8 come taxes, or licensing requirements of a Member
9 State or political subdivision thereof; or

10 (2) affecting the application of such taxes or re-
11 quirements or enlarging or reducing the authority of
12 any Member State to impose such taxes or require-
13 ments.

14 (b) NO EFFECT ON NEXUS, ETC.—

15 (1) IN GENERAL.—No obligation imposed by
16 virtue of the authority granted by section 4 shall be
17 considered in determining whether a seller has a
18 nexus with any Member State for any other tax pur-
19 pose.

20 (2) PERMISSIBLE MEMBER STATE AUTHOR-
21 ITY.—Except as provided in subsection (a), and in
22 section 4, nothing in this Act permits or prohibits a
23 Member State from—

24 (A) licensing or regulating any person;

1 (B) requiring any person to qualify to
2 transact intrastate business;

3 (C) subjecting any person to State taxes
4 not related to the sale of goods or services; or

5 (D) exercising authority over matters of
6 interstate commerce.

7 **SEC. 8. EXPEDITED JUDICIAL REVIEW.**

8 (a) **THREE-JUDGE DISTRICT COURT HEARING.**—
9 Notwithstanding any other provision of law, any civil ac-
10 tion challenging the constitutionality of this Act, or any
11 provision thereof, shall be heard by a district court of
12 three judges convened pursuant to the provisions of sec-
13 tion 2284 of title 28, United States Code.

14 (b) **APPELLATE REVIEW.**—

15 (1) **IN GENERAL.**—Notwithstanding any other
16 provision of law, an interlocutory or final judgment,
17 decree, or order of the court of three judges in an
18 action under subsection (a) holding this Act, or any
19 provision thereof, unconstitutional shall be review-
20 able as a matter of right by direct appeal to the Su-
21 preme Court.

22 (2) **30-DAY TIME LIMIT.**—Any appeal under
23 paragraph (1) shall be filed not more than 30 days
24 after the date of entry of such judgment, decree, or
25 order.

1 **SEC. 9. DEFINITIONS.**

2 For the purposes of this Act the following definitions
3 apply:

4 (1) **AFFILIATE.**—The term “affiliate” means
5 any entity that controls, is controlled by, or is under
6 common control with a seller.

7 (2) **GOVERNING BOARD.**—The term “Governing
8 Board” means the governing board established by
9 the Streamlined Sales and Use Tax Agreement.

10 (3) **MEMBER STATE.**—The term “Member
11 State”—

12 (A) means a Member State as that term is
13 used under the Streamlined Sales and Use Tax
14 Agreement as of the date of enactment of this
15 Act; and

16 (B) does not include associate members
17 under the Agreement.

18 (4) **NATIONWIDE.**—The term “nationwide”
19 means throughout each of the several States and the
20 District of Columbia, the Commonwealth of Puerto
21 Rico, Guam, American Samoa, the Virgin Islands,
22 the Northern Mariana Islands, and any other terri-
23 tory or possession of the United States.

24 (5) **NONDISCRETIONARY DUTY OF THE GOV-
25 ERNING BOARD.**—The phrase “nondiscretionary
26 duty of the Governing Board” means any duty of

1 the Governing Board specified in the Agreement as
2 a requirement for action by use of the term “shall”,
3 “will”, or “is required to”.

4 (6) PERSON.—The term “person” means an in-
5 dividual, trust, estate, fiduciary, partnership, cor-
6 poration, or any other legal entity, and includes a
7 State or local government.

8 (7) REMOTE SALE.—The term “remote sale”
9 refers to a sale of goods or services attributed to a
10 particular Member State with respect to which a
11 seller does not have adequate physical presence to
12 establish nexus under the law existing on the day be-
13 fore the date of enactment of this Act so as to allow
14 such Member State to require, without regard to the
15 authority granted by this Act, the seller to collect
16 and remit sales or use taxes with respect to such
17 sale.

18 (8) REMOTE SELLER.—The term “remote sell-
19 er” means any seller who makes a remote sale.

20 (9) STATE.—The term “State” means any
21 State of the United States of America and includes
22 the District of Columbia, Puerto Rico, and any other
23 territory or possession of the United States.

24 (10) STREAMLINED SALES AND USE TAX
25 AGREEMENT.—The term “Streamlined Sales and

1 Use Tax Agreement” (or “the Agreement”) means
2 the multistate agreement with that title adopted on
3 November 12, 2002, as amended through the date of
4 enactment of this Act and unless the context other-
5 wise indicates as further amended from time to time.

6 (11) TAX ON TELECOMMUNICATIONS SERV-
7 ICES.—The term “tax on telecommunications serv-
8 ices” or “taxes on telecommunication services” shall
9 encompass the same taxes, charges, or fees as are
10 included in section 116 of title 4, United States
11 Code, except that “telecommunication services” shall
12 replace “mobile telecommunications services” when-
13 ever such term appears.

14 (12) TELECOMMUNICATIONS SERVICE.—

15 (A) IN GENERAL.—The term “tele-
16 communications service” means the electronic
17 transmission, conveyance, or routing of voice,
18 data, audio, video, or any other information or
19 signals to a point, or between or among points.

20 (B) INCLUSION.—The term “telecommuni-
21 cation service”—

22 (i) includes transmission services in
23 which computer processing applications are
24 used to act on the form, code, or protocol
25 of the content for purposes of trans-

1 mission, conveyance, or routing without re-
2 gard to whether such services are referred
3 to as voice over Internet protocol services
4 or are classified by the Federal Commu-
5 nications Commission as enhanced or value
6 added services; and

7 (ii) does not include the data proc-
8 essing and information services that allow
9 data to be generated, acquired, stored,
10 processed, or retrieved and delivered by an
11 electronic transmission to a purchaser
12 where the primary purpose of such pur-
13 chaser for the underlying transaction is the
14 processed data or information.

15 **SEC. 10. SENSE OF THE CONGRESS ON DIGITAL GOODS AND**
16 **SERVICES.**

17 It is the sense of the Congress that each State that
18 is a party to the Agreement should work with other States
19 that are also party to the Agreement to prevent double
20 taxation in situations where a foreign country has imposed
21 a transaction tax on a digital good or service.

○